

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JUAN ESCOBEDO, #1021774	§	
	§	
v.	§	CIVIL ACTION NO. G-06-738
	§	
ALBERTO R. GONZALES,	§	
U.S. ATTORNEY GENERAL	§	

REPORT AND RECOMMENDATION

Before the Court is the Petition for a Writ of Habeas Corpus of Juan Escobedo, a prisoner in the Texas Department of Criminal Justice - Correctional Institutions Division ("TDCJ-CID") (Instrument No. 1). Petitioner filed this writ pursuant to 28 U.S.C. § 2241. Having carefully considered the Petition and the applicable law, the Court submits its Report and Recommendation to the District Court.

Petitioner seeks a determination from this Court that he is United States citizen as provided for under the Child Citizen Act of 2000, 8 U.S.C. § 1432(a)¹ and, therefore, not subject to removal. Petitioner's "derivative citizenship" claim is only cognizable by the court of appeals in a petition for review. 8 U.S.C. § 1252(a)(5), (b)(5)(A, C); *Omolo v. Gonzales*, 452 F.3d 404, 406-07 (2006); *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733, 735-36 (5th Cir. 2005), *cert. denied*, __ U.S. __, 126 S.Ct. 1055 (2006); *see also*, *Baeta v. Sonchik*, 273 F3d 1261, 1263 (9th Cir. 2001) (nationality issues within jurisdiction of court of appeals); *Giap v. Immigration and Naturalization Service*, 311 F.Supp.2d 438, 440 (S.D.N.Y. 2004) (claim of citizenship was within

¹ 8 U.S.C. § 1432, *repealed by* Pub.L. 106-395, Title I § 103(a), October 30, 2000, 114 Stat. 1632.

exclusive jurisdiction of court of appeals not district court). The Court is without jurisdiction to consider Petitioner's § 2241 petition and, therefore, **RECOMMENDS** that it be **DISMISSED** without prejudice.

CONCLUSION

For all the reasons stated, this Court **RECOMMENDS** the Petition for a Writ of Habeas Corpus of Juan Escobedo (Instrument No. 1) be **SUMMARILY DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.**

The Clerk **SHALL** send copies of this Report and Recommendation to the Parties. The Parties **SHALL** have until **December 19, 2006**, in which to have written objections, filed pursuant to 28 U.S.C. § 636(b)(1)(C), **physically on file** in the Office of the Clerk. The Objections SHALL be electronically filed and/or mailed to the Clerk's Office at P.O. Drawer 2300, Galveston, Texas 77553. Any Objections filed **SHALL** be contained in a written document specifically entitled "Objections to the Report and Recommendation of the Magistrate Judge", which will then be forwarded to the District Judge for consideration. Failure to file written objections within the prescribed time **SHALL** bar the aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

DONE at Galveston, Texas this 29th day of November, 2006.



John R. Froeschner
United States Magistrate Judge